

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 8409 OF 2015

Shri A. S. Siddiqui	..	Petitioner
VS.		
Shankar R. Yadav	..	Respondent

Ms N. S. Moily for Petitioner.
Mr. Mahesh S. Yadav for Respondent.

CORAM : M. S. SONAK, J.
DATE : 19 AUGUST 2015

P.C. :-

- 1] **Not on board. Upon production, taken on board.**
- 2] This petition challenges order dated 2 July 2015 made by the Division Bench of the Small Causes Court declining the petitioner (appellant) leave to amend the written statement.
- 3] If the application seeking leave to amend the written statement is perused, then it is clear that the petitioner seeks to produce on record certain additional evidence. It is the case of the petitioner that such additional evidence was not to his knowledge earlier. In fact, based upon the averments in the schedule appended to the application seeking leave to amend, the petitioner has taken out an application under Order XLI Rule 27 of the CPC seeking

leave to produce on record additional evidence at the appellate stage.

4] The Division Bench of the Small Causes Court, has rightly declined leave to amend the written statement. However, the Division Bench of the Small Causes Court has again rightly at paragraph 12 of the impugned order taken cognizance of the application under Order XLI Rule 27 of the CPC and recorded that the same will be decided along with the appeal at the stage of final hearing. In fact, the Apex Court in the case of *Union of India vs. Ibrahim Uddin & Anr.*¹ has held that appropriate stage for consideration of application under Order XLI Rule 27 of the CPC is the final hearing of the Appeal.

5] In the event, leave is granted to amend the written statement at this stage, the petitioner would insist upon a remand for the purpose of leading additional evidence before the Trial Court. The suit in the present case was instituted in the year 1996. In the peculiar facts of the present case, adoption of such a course of action would cause immense prejudice to the respondent. Indeed, the petitioner is right in his contention that the material which he seeks to produce by way of amendment of the written statement was unavailable to him earlier, then this is an aspect which will be

1 (2012) 8 SCC 148

taken into consideration by the Appeal Court whilst deciding the application under Order XLI Rule 27 of the CPC. For that purpose, there is no necessity to grant leave to amend the written statement and thereafter remand the matter to the Trial Court by setting aside the decree which is obtained by the respondent.

6] Accordingly, there is no jurisdictional error in the making of the impugned order. This petition is therefore dismissed. However, it is clarified that at the stage of consideration of the petitioner's application under Order XLI Rule 27 of the CPC, the Appeal Court shall not permit itself to be influenced by any of the findings or observations in the impugned order dated 2 July 2015.

7] All concerned to act on basis of authenticated copy of this order.

(M. S. SONAK, J.)